

**Deed Establishing Fundraising Institute of  
New Zealand Educational Trust**

**James Thomas Mutch**  
Settlor

**Shelley Marie Keach**  
**James Thomas Mutch**  
**Clive Graham Pedley**  
**Brendon Mark Veale**  
Trustees

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## Parties

James Thomas Mutch of Auckland, Fundraiser

### (Settlor)

Shelley Marie Keach of Christchurch, Fundraiser

James Thomas Mutch of Auckland, Fundraiser

Clive Graham Pedley of Palmerston North, Managing Director

Brendon Mark Veale of Wellington, Fundraising Manager

### (Trustees)

## Background

- A The Settlor wishes to establish a trust to be known as Fundraising Institute of New Zealand Educational Trust for the objects set out in this Deed.
- B The Trustees must be FINZ members who have agreed to act as Trustees of the Trust. The Trustees as listed in this Deed meet these criteria and have agreed to act as Trustees of the Trust.
- C The Settlor and Trustees wish to set out and define the trusts and the conditions upon which the funds, property and assets of the Trust are held.

## Operative provisions

### 1 Definitions and construction

#### Definitions

1.1 In this deed, unless the context requires otherwise:

**Charitable Purposes** means every purpose which under the law of New Zealand is charitable.

**Financial Year** means the Financial Year commencing on 1 January and ending on 31 December in that year or any other Financial Year adopted by the Trustees.

**FINZ** means the Fundraising Institute of New Zealand

**Person** includes, without limitation, any body corporate, firm, organisation or trust.

**Related Party** means a person specified in section CW 35(5) of the Income Tax Act 2004, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on, or
- (b) a shareholder or director of the company by which the business is carried on, or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on, or

- (d) a person where that person is associated with any person in (a) to (c) above, where associated means associated in terms of section OD 7 of the Income Tax Act 2004.

**Settlor** means James Thomas Mutch, Fundraiser of Auckland

**Special Resolution** means a resolution passed at a meeting of Trustees at which not less than three Trustees are present and voting, vote in favour of the resolution.

**Tax Laws** means any of the Inland Revenue Acts as that term is defined for the purposes of the Tax Administration Act 1994.

**Trust** means Fundraising Institute of New Zealand Educational Trust established by this deed.

**Trust Fund** means the all money, investments, property and assets, and leases or licences of property and assets, from time to time owned or beneficially held by the Trust.

**Trustees** or **Trust Board** means the Trustees of the Trust from time to time. **Trustee** means a Trustee of the Trust from time to time.

**Working Day** means a week day excluding public holidays

## Interpretation

1.2 In the construction of this deed, unless the context otherwise requires:

- 1.2.1 A reference to 'Trustees' is a reference to the trustees for the time being of the Trust Fund whether original, additional or substituted and includes the trustees that sign this deed and any future additional or substituted trustees.
- 1.2.2 A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, Trust, state or agency of state (in each case whether or not having separate legal personality).
- 1.2.3 Headings are included for convenience only and do not affect the interpretation of this deed.
- 1.2.4 This deed is binding upon the parties and their respective successors and permitted assignees.
- 1.2.5 Where the context permits, words describing the singular include the plural and vice versa and words imputing masculine, feminine or neuter gender include all genders.
- 1.2.6 In this deed, unless the context otherwise requires, any reference to any legislation includes a modification and re-enactment of that legislation or legislation enacted to substitution for any regulation, order in council and other instrument from time to time issued or made under that legislation.
- 1.2.7 For the purposes of the Perpetuity Act 1964, the perpetuity period applicable to this deed shall be 80 years from the date of this deed.

## **2 Establishment of the Trust**

- 2.1 The Settlor settles the sum of \$1,000.00 on the Trustees to be held by them on the terms set out in this document.
- 2.2 The Trustees agree to act as Trustees of the Trust on the terms set out in this document.
- 2.3 The Trust shall comprise the Trust Fund from time to time held by or within the control of the Trustees under this document, including the income arising from the Trust Fund and any accumulation of such income.
- 2.4 The Trust Fund shall be held on Trust by the Trustees and shall be managed and administered on the terms contained in this document.
- 2.5 The Trust shall commence on the date of this document and shall continue until terminated under clause 10.17.

## **3 Name of Trust**

- 3.1 The name of the Trust is "Fundraising Institute of New Zealand Educational Trust".

## **4 Objects and purposes of the Trust**

- 4.1 The objects of the Trust are:
- 4.1.1 To promote education support amongst those who are fundraising within the charitable sector through the provision of:
- \* resources to educational institutions
  - \* resources to libraries and in particular the FINZ library
  - \* scholarships and prizes for educational advancement in charitable fundraising
  - \* financial support to those attending FINZ Conferences and FINZ professional development programmes on criteria based on merit and /or need
  - \* sponsorship of training courses to people involved in charitable fundraising within the community both in New Zealand and overseas
  - \* fundraising skills training and or support to charitable fundraising training institutions
- 4.1.2 To provide other assistance to charitable fundraisers within our community or other communities in times of disaster
- 4.1.3 To act as the repository for FINZ historical materials and records that in the opinion of the trustees require preservation
- 4.1.4 All things incidental to the charitable objects and purposes described in this clause 4.1.
- 4.2 The Trust's objects shall only be carried out in and to benefit people in New Zealand.

## **5 Trusts of Income and Capital**

### **Income of the Trust**

- 5.1 The Trustees may with respect to all or any part of the income arising from the Trust Fund for each Financial Year:
- 5.1.1 pay, apply, or appropriate from income (to the extent income is available) all expenses and other charges and provisions ordinarily met from income;
  - 5.1.2 make, retain or charge against income any payments, reserves or provisions necessary or desirable for the proper administration and maintenance and development of the Trust and the Trust Fund including any appropriate reserves for capital works which the Trustees consider desirable to achieve the objects of the Trust;
  - 5.1.3 reduce or repay any loans or liabilities of the Trust; and
  - 5.1.4 pay, apply or appropriate from income such amount as the Trustees decide for or towards one or more of the objects of the Trust.
- 5.2 Any income of any Financial Year not dealt with under clause 5.1 shall be accumulated and added to the capital of the Trust Fund.

### **Capital of the Trust**

- 5.3 At any time the Trustees may, or may decide to, pay, apply or appropriate as much of the capital of the Trust Fund as they think fit for or towards one or more of the objects of the Trust. If the Trustees provide for more than one such object they need not treat each object equally. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income.
- 5.4 For the avoidance of doubt, no part of the capital income or other funds of the Trust shall inure to the benefit of, or be distributable to, its Trustees, officers or other private persons, except that the Trustees shall be empowered and authorised to pay reasonable compensation for services rendered and to make payments in furtherance of its Objects.

## **6 Powers of the Trustees**

- 6.1 In addition to the powers conferred on the Trustees by law, the Trustees shall, subject always to the trusts imposed by this Deed, have the widest possible powers and discretions to achieve the objects of the Trust including, without limitation, exercising unrestricted powers to borrow and raise money, give securities and guarantees and to appoint an attorney or attorneys, and shall be empowered to exercise all the rights, powers and privileges and may incur all the liabilities and obligations of a natural person of full age and capacity. The Trustees shall exercise their powers either alone or jointly with another person or persons.
- 6.2 The Trustees shall have the power to collect funds and raise money by all lawful means (including by gaming machines) and, at their discretion, receive, accept, encourage and enlist or refuse financial and other contributions, subscriptions, sponsorships, donations, legacies, endowments or bequests from any source. The

Trustees may also conduct fund raising campaigns in order to further the exclusively charitable Objects of the Trust if the Trustees deem such action to become necessary.

- 6.3 Without in any way limiting the wide powers conferred by clause 6.1 the Trustees shall have power to invest the Trust Fund and the income from the Trust Fund not immediately required for the objects of the Trust as the Trustees think fit provided that in making any investment the Trustees exercise the care, diligence and skill required of a prudent Trustee as set out in the Trustee Act 1956.
- 6.4 Notwithstanding anything contained in this Deed, the objects of the Trust are, or shall be, charitable and shall be deemed charitable purposes. The powers of the Trustees shall be restricted accordingly.

## **7 Duties of Trustees**

### **Trustees' responsibilities**

- 7.1 The Trustees shall take overall control of and responsibility for the governance of the Trust. The Trustees shall perform all of their responsibilities under this deed in a prudent manner and shall exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.
- 7.2 The Trustees shall devote adequate and sufficient time, attention and resources to carry out their obligations under this deed to ensure that the Trust achieves its objectives.
- 7.3 The Trustees shall act in accordance with the objects of the Trust.

### **Reporting and financial records**

- 7.4 The Trustees shall keep an account or accounts at such bank or banks or financial institutions as they shall from time to time determine. Cheques and other debits from the account or accounts shall be signed by such person or persons as the Trustees shall from time to time authorise in writing.
- 7.5 The Trustees shall keep full and correct records and accounts of all of their receipts, credits, payments, assets, liabilities and transactions and all other matters necessary for showing the true state and condition of the Trust. As soon as practicable after the end of each Financial Year, the Trustees shall ensure that financial statements are prepared including a statement of position, a statement of financial performance and notes to those statements giving a true and fair view of the financial position of the Trust for that Financial Year. Such financial statements may be audited by a chartered accountant appointed for that purpose by the Trustees, as the Trustees determine.
- 7.6 Documents to be executed by or for the Trust shall be signed by any two of the Trustees, one signatory to be the chairperson
- 7.7 The Trustees shall ensure that all necessary tax accounts, returns, reports, declarations, notices, certificates, reconciliations and other information required by the Inland Revenue Department are prepared and filed so as to allow the Trust to retain its agreed status for taxation purposes.

## **8 Charitable Trusts Act 1957 and the Charities Commission**

### **Incorporation**

- 8.1 The Trustees may after the execution of this document apply for incorporation under the Charitable Trusts Act 1957 and the Trustees are authorised to make such application on behalf of the Trust.

### **Charities Commission**

- 8.2 The Trustees may at any time after the execution of this document apply to the Charities Commission for registration as a charitable entity under the Charities Act 2005.

## **9 Appointment, retirement and proceedings of Trustees**

### **Number of Trustees**

- 9.1 There shall be not less than four nor more than seven Trustees.

### **Termination of office**

- 9.2 The office of a Trustee shall become vacant if the Trustee:
- 9.2.1 is, under clause 9.4, not capable of holding office as a Trustee;
  - 9.2.2 is absent from New Zealand for over 12 months without obtaining a leave of absence from the Trustees;
  - 9.2.3 fails to attend 3 consecutive meetings of the Trustees without giving a reason acceptable to the Trustees;
  - 9.2.4 has resigned as a member of FINZ, or
  - 9.2.5 has died.
- 9.3 For the avoidance of doubt, where a vacancy occurs, the remaining Trustees may act until a replacement Trustee is appointed.
- 9.4 The following persons shall not be capable of being appointed or reappointed or continuing to hold office as a Trustee:
- 9.4.1 an undischarged bankrupt;
  - 9.4.2 an individual who is under the age of 18;
  - 9.4.3 an individual who has been convicted of a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961) and has been sentenced for that crime within the last 7 years;
  - 9.4.4 an individual who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, a company under section 382, section 383, or section 385 of the Companies Act 1993;
  - 9.4.5 an individual who is disqualified from being an officer of a charitable entity under section 31(4) of the Charities Act 2005;
  - 9.4.6 an individual who is subject to a property order made under the Protection of Personal and Property Rights Act 1988, or whose



property is managed by a trustee corporation under section 32 of that Act;

- 9.4.7 a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; and
- 9.4.8 any other person disqualified from being an officer of a registered charity under the Charities Act 2005.

### **Appointment of new Trustees**

- 9.5 If any vacancy occurs in the offices of Trustee or it is thought desirable to appoint further Trustees for any reason, the President for the time being of FINZ, in consultation with the Trustees, may appoint a new Trustee or Trustees.

### **Removal of Trustees**

- 9.6 A Trustee may be removed from office if all of the other Trustees of the Trust resolve, by way of resolution in writing signed by those Trustees, to remove that person from office. The Trustees need not give reasons for removing the Trustee, however in exercising the power of removal, they must:
  - 9.6.1 act reasonably, having regard to the objects of the Trust; and
  - 9.6.2 consult with the President for the time being of FINZ.
  - 9.6.3 If the removal of the Trustee reduces the number of Trustees to less than the minimum number of Trustees under clause 9.1, only exercise the power of removal in conjunction with the appointment of a replacement Trustee or Trustees.

### **Resignation of Trustees**

- 9.7 Any Trustee may resign from the Trust by giving no less than 30 days' written notice to the remaining Trustees and such notice shall take effect from the date specified in the notice or, if there is no date specified, upon the expiry of 30 days from the date the letter was sent.

### **Term of office**

- 9.8 Each member of the Trust will serve for a term of office of three years following appointment. At least two months prior to the second Annual General Meeting of the Trust following acceptance of this Deed, the current trustees will draw a ballot to determine which trustees will retire at the Annual General Meeting and which trustees will serve until the subsequent Annual General Meeting. At least one third of the trustees will retire at the second Annual General Meeting and one third at the third Annual General Meeting. Thereafter retirement shall be by rotation.

### **Administration of the Trust**

- 9.9 The Trustees shall have the absolute management and control of the Trust and shall have the power to appoint, remunerate and remove or suspend such officers, professional advisors or employees as they may from time to time deem reasonable and proper. Any individual, whether or not a Trustee, may be appointed as an officer, professional advisor or employee of the Trust. Any remuneration paid by the Trust to such officer, professional advisor or employee shall be reasonable and commensurate with the services performed.

- 9.10 The Trustees shall hold an Annual General Meeting of the Trust each and every year (the "Annual General Meeting"). At the Annual General Meeting, the Board shall decide on significant matters of business of the Trust, including, but not limited to, matters of finance and expenditure, investment, resignation or retirement of Trustees, governance and management of the Trust and the appointment of officers for the ensuing year.
- 9.11 The Trustees, if intending to do so, may at the Annual General Meeting appoint an auditor who shall audit the accounts of the Trust once every year, and such auditor shall have access at all reasonable times to the books and accounts of the Trust and shall make a report to the Trustees on the accounts and state whether the same exhibit a true and fair record and view of the results and state of affairs of the Trust.

#### **Appointment of Chairperson**

- 9.12 The President for the time being of FINZ shall appoint one of the Trustees to be the Chairperson of the Trust.
- 9.13 The Chairperson of the Trust shall hold the office for a term not exceeding 12 months but is able to stand for re-election.
- 9.14 If the Chairperson is unable for any reason to perform the Chairperson's duties then the Trustees may elect an acting Chairperson during the relevant period.
- 9.15 Notwithstanding the provisions of clause 9.12 the Trustees may, by Special Resolution, replace the Chairperson with a new Chairperson at any time.

#### **Appointment of Treasurer**

- 9.16 The President for the time being of FINZ shall appoint a treasurer to administer the Trust's financial affairs (the "Treasurer"). The Treasurer shall report to the Trustees as to the income and expenditure of the Trust at each general meeting of the Trust and at the Annual General Meeting. The Treasurer shall present an annual financial statement to the Trustees at each Annual General Meeting.

#### **Appointment of Secretary**

- 9.17 The President for the time being of FINZ shall appoint a secretary to assist in the general administration of the Trust (the "Secretary"). The Secretary shall give notice of all meetings and shall keep the minutes of all meetings of the Trustees (the "Minutes").
- 9.18 The Secretary shall ensure that:
- (a) A Minutes book shall be kept (the "Minute Book") and all proceedings of the meetings of the Trustees shall be entered in the Minute Book.
  - (b) The Minutes as signed by the Chairperson of the meeting of which they are a record, or by the Chairperson of the next succeeding meeting, shall be evidence of the proceedings of the meeting of which they are a record; and
  - (c) Where Minutes have been made in accordance with the provisions of this clause at any meeting of the Trustees, then until the contrary is proved, the meeting shall be deemed to have been

duly held and convened and all proceedings recorded therein to have been duly conducted.

### **Proceedings of Trustees**

- 9.19 Subject to this deed, the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit.
- 9.20 At any meeting of the Trustees the Chairperson of the Trust shall preside, or in the absence of the Chairperson of the Trust the Trustees may elect one of their members to preside.
- 9.21 Decisions of the Trustees shall be decided, if possible, by a consensus of votes. Each Trustee present at a meeting shall be entitled to one (1) vote.
- 9.22 In the event that a consensus cannot be reached, decisions shall be decided by a majority of votes and any such resolution shall be binding on all Trustees. In the event of an equality of votes, the Chairperson shall have a second or casting vote.
- 9.23 No business shall be transacted at any meeting unless the required quorum is present at the commencement of business. The quorum for passing a Special Resolution shall be the majority of all Trustees. The quorum for the transaction of any business, other than business that requires a Special Resolution, shall be a majority of Trustees present at the relevant meeting.
- 9.24 An act or decision of the Trustees present shall not be invalid by reason only of:
- 9.24.1 a fault, default or irregularity in, or in connection with, the appointment of a Trustee; or
- 9.24.2 a vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee.
- 9.25 The Trustees may, by Special Resolution and subject to the provisions of this Deed, adopt, amend, alter or rescind any rules necessary for the proper and efficient management of Trustee meetings and the administration and management of the Trust Fund.

### **Convening of meetings of Trustees**

- 9.26 The Trustees shall hold at least two meetings in each Financial Year and shall meet at such places and times, and in such manner, as they determine.
- 9.27 The Chairperson shall convene the meetings of the Trustees.
- 9.28 The Chairperson shall convene any additional meetings of the Trustees if the Chairperson receives a written request from at least two Trustees. In any such case the Trustees requesting the additional meeting shall provide notice of all motions to be proposed at such meeting. At least five Working Days prior notice of meetings of Trustees shall be given to all Trustees together with notice of the motions to be proposed at the meeting.
- 9.29 Every notice of a general meeting of the Board shall state the place, day and time of the meeting. Every notice of a special meeting shall further state the matter to be discussed at that meeting. Notice of any general meeting or special meeting shall be waived by all Trustees having signed a waiver of the requirement of such notice and such waiver being placed in the Minute Book. No notice shall be necessary for

adjourned meetings except to Trustees who are not present when the meeting was adjourned.

- 9.30 All acts done by any meeting of the Trustees or of a committee of Trustees or by any person acting as a Trustee shall, notwithstanding that it is discovered afterwards that there was some defect in the appointment of any such Trustee or person acting as aforesaid, be as valid as if such person had been duly appointed and was qualified to be a Trustee.

#### **Appointment of Committees**

- 9.31 The Trustees may delegate any of their powers and duties under this deed to any committee or committees consisting of such Trustees as the Trustees may appoint for such purpose.
- 9.32 The committee Chairperson shall convene committee meetings as required.
- 9.33 Committee minutes and records shall be kept in accordance with clause **Error! Reference source not found.**
- 9.34 Committee proceedings shall generally conform to the procedures adopted for meetings of the Trustees.

#### **Resolution assented to by Trustees**

- 9.35 A resolution in writing signed or assented to by letter, email, facsimile or other written manner, by all Trustees entitled to receive notice of meetings of the Trustees, shall be as valid and effective as if it had been passed at a meeting of Trustees. Any such resolution may consist of several documents in like form either signed or dispatched by any one or more of the Trustees.

#### **Resolutions may be rescinded**

- 9.36 Any resolution may be rescinded or varied by the Trustees at any general or special meeting which is to be held following not less than two (2) working days notice of such general meeting or special meeting taking place.

#### **Teleconference meeting of Trustees**

- 9.37 The contemporaneous linking together by telephone or other means of communication of a number of Trustees not less than the quorum (whether or not any 1 or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this deed in respect of such meetings shall apply so long as the following conditions are met:

9.37.1 all Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting, and shall have first received 5 Working Days prior notice of such meeting;

9.37.2 each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees taking part in the meeting; and

9.37.3 at the commencement of the meeting each Trustee must acknowledge the Trustee's presence for the purpose of the meeting to all other Trustees taking part.

## **10 General Provisions**

### **Service of notices**

- 10.1 Notices shall be deemed served by one party upon another party:
- 10.1.1 if posted, five Working Days following posting;
  - 10.1.2 if delivered personally, on the date of service; or
  - 10.1.3 if sent by facsimile or other electronic device, when receipt is confirmed.

### **Receipts**

- 10.2 Any funds allocated to any body or institution may be paid to any responsible officer or member of the body or institution concerned who is recognised by the Trustees as having responsibility for that body or institution. The receipt of such person shall be a full discharge to the Trustees who shall not be bound to see to the further application of the funds.

### **Delegation by Trustees**

- 10.3 The Trustees shall have, to the extent permitted by law, full power to appoint officers, employees, managers and agents and to delegate to any officers, employees, managers, agents or to any attorney or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this deed but without releasing the Trustees from their obligations under this deed. Without affecting the generality of the power of delegation the Trustees may in exercising it:
- 10.3.1 appoint, by power of attorney, any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit and with power for the attorney or agent to sub delegate any such powers, authorities or discretions; or
  - 10.3.2 appoint, by writing or otherwise, any person to be an officer, employee, manager, agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such officer, employee, manager, agent or sub-agent for any reason as the Trustees think sufficient.

### **Remuneration and Expenses**

- 10.4 Each Trustee shall be entitled to be reimbursed for fair and reasonable expenditure incurred by him or her on behalf of the Trust, subject in every case to approval by the Trustees.
- 10.5 Subject to clause 10.6, no Trustee will be entitled to remuneration for his or her services as Trustee.
- 10.6 The Trustees may pay reasonable and proper remuneration to any officer, agent, contractor or servant of the Trust (whether a Trustee or current FINZ staff member or not) in return for services rendered to the Trust.

- 10.7 The Trustees may take out a Trustees' indemnity insurance policy or policies in relation to the Trustees and any person employed by the Trustees and to pay the premiums in respect of that policy or those policies out of the Trust Fund.
- 10.8 Nothing expressed or implied in this Deed shall permit the activities of the Trustees, or any business carried on by or on behalf of or for the benefit of the Trustees upon the trusts of this Deed, to be carried on for the private pecuniary profit of any individual.

#### **Prohibition of Benefit or Advantage by Related Parties**

- 10.9 In the carrying on of any business by or for the benefit of the Trust, including in the exercise of any power authorising the remuneration of trustees, no benefit or advantage shall be gained by any person who has some control over the business. A Related Party is treated as having some control over the business where that Related Party, in his or her or its capacity as Related Party, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:
- 10.9.1 the nature or amount of that benefit or advantage; and
  - 10.9.2 the circumstances in which that benefit or advantage is, or is to be, so gained.
- 10.10 For the purposes of clause 10.9:
- 10.10.1 a person is not treated as having control over the business merely because the person provides professional services to the Trust or the business and the ability to influence arises because the person is a trustee company, a Public Trust or a Maori Trustee or the person provides those services in the course of and as part of carrying on, as a business, a professional public practice.
  - 10.10.2 **carrying on business** (or similar expression) includes a trustee deriving rent, fines, premiums, or any other revenues from an asset of the Trust, where the asset was disposed of to the Trust by the Related Party.
  - 10.10.3 **benefit or advantage** includes:-
    - (a) any advantage whether in money or convertible into money;
    - (b) any income (including from business or trade-like activities, employment, dividends, royalties, benefits, pensions, compensation, government grant, property obtained by theft, income from financial instruments, bad debt repayment, foreign company income and foreign investment income);
    - (c) if the person has disposed of an asset to the Trust, the retaining of an interest in that asset, or the asset will revert to that person;
    - (d) but does not include the earning of interest where the interest payable is at no more than the current commercial rate, given the nature and term of the loan.
  - 10.10.4 **gained** includes anything afforded, received, gained, achieved or derived.

### **Interested Trustees**

- 10.11 It shall be the duty of a Trustee who is in any way directly or indirectly interested in any contract or arrangement or proposed contract or arrangement with the Trustees to declare the nature of his or her interest at a meeting of the Trustees, but failure to do so shall not disqualify the Trustee or invalidate the contract, proposed contract or any other matter in which the interest lies. A Trustee who is interested shall not be entitled to vote on any issue related to the contract, proposed contract or other matter in which the interest lies.
- 10.12 If any question shall arise at any meeting as to the materiality of a Trustee's interest or as to the entitlement of any Trustee to vote and such question is not resolved by the Trustee voluntarily agreeing to abstain from voting, such question shall be referred to the chairperson of the meeting and his or her ruling in relation to any such Trustee shall be final and conclusive. A Trustee shall be deemed to have an interest in any matter in which he or she would reasonably be regarded as likely to be influenced materially to prefer interests other than those of the Trust, or any other affected party, for reasons of personal advantage or the advantage of business or family associates.

### **Trustees' Indemnity and Liability**

- 10.13 The Trustees shall not be liable for:
- 10.13.1 any losses or liabilities;
  - 10.13.2 any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this deed; or
  - 10.13.3 any omission or omissions or non-exercise in respect of any trust, power or discretion of the Trustees under this deed,
- except losses or liabilities arising from their own dishonesty, wilful default or wilful breach of trust or negligence in the carrying out of their legal responsibilities.
- 10.14 The Trustees, and every other person acting on behalf of the Trustees, shall be indemnified out of the Trust Fund against all proper liabilities and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Trustees under this deed and in respect of any matter or thing done or omitted to be done in any way relating to this deed and the Trust (provided that such liability is not attributable to his or her own dishonesty or to the wilful commission or omission by him or her of an act known by him or her to be a breach of trust). This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled although it may be subsequently found that the person was not in fact so entitled. The Trustees shall have a lien or charge on the Trust Fund and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.
- 10.15 The liability of the Trustees in connection with this deed or at law, in equity, or on any other basis shall at all times be limited to the Trust Fund.

### **Amendment of the Trust Deed**

- 10.16 The Trustees may from time to time by unanimous Special Resolution alter, rescind or add to any of the provisions of this deed or its schedules provided that:

- 10.16.1 at least 14 days notice of intention to move any amendment to this deed is given to all Trustees; and
- 10.16.2 the varied terms do not prejudice:
  - (a) the charitable purpose of the Trust;
  - (b) the eligibility of the Trust to claim the exemptions under Tax Laws for charitable entities; and
  - (c) the ability of the Trust to remain registered under the Charities Act 2005.
- 10.16.3 This clause does not authorise any variation to clause 9.5 (Appointment of new Trustees) of this Deed.

### **Winding up of the Trust**

- 10.17 The Trust shall terminate and be wound up and dissolved if:
  - 10.17.1 the Trustees resolve by unanimous Special Resolution that the Trust shall be wound up at a meeting called for that purpose; or
  - 10.17.2 if at any time the objects of the Trust shall fail or if for any reason the purposes of the Trust shall become wholly frustrated and incapable of being carried out;
  - 10.17.3 the Trust is wound up by law.
- 10.18 Following a Special Resolution to wind up the Trust or if the Trust is wound up by law, the Trust Fund or the proceeds resulting from the Trust Fund shall be applied by the Trustees upon the winding up in the following order:
  - 10.18.1 first in meeting all costs, expenses and liabilities of the Trust, including the costs and expenses of winding up the Trust, and setting aside any amount that the Trustees consider necessary or desirable (having regard to generally accepted accounting practices) in respect of any contingent liability of the Trust; and
  - 10.18.2 secondly, in the payment or distribution (by instalments if the Trustees consider appropriate) of the remaining assets of the Trust to any entity or entities registered with the Charities Commission which in the Trustees' sole discretion has charitable purposes similar to the Trust.
  - 10.18.3 Subject to the provisions of clause 10.18, on winding up no part of the Trust Fund shall be paid, applied or transferred except in accordance with the objects of the Trust, and no private pecuniary profit, benefit or advantage shall be made by any person from the Trust, except in accordance with clauses 10.4 to 10.6 inclusive.

## **11 Governing Law**

- 11.1 The Trust shall be governed by and construed in accordance with the laws of New Zealand.



11.2 Execution and date

Executed as a deed.

Date:

Signed by James Thomas Mutch )  
 )  
as Settlor in the presence of: ) \_\_\_\_\_

Witness signature:

Witness name:

Occupation:

Address:

Signed by Shelley Marie Keach )  
 )  
as Trustee in the presence of: ) \_\_\_\_\_

Witness signature:

Witness name:

Occupation:

Address:

Signed by James Thomas Mutch )  
 )  
as Trustee in the presence of: ) \_\_\_\_\_

Witness signature:

Witness name:

Occupation:

Address:

Signed by Graham Clive Pedley )  
 )  
as Trustee in the presence of: ) \_\_\_\_\_

Witness signature:

Witness name:

Occupation:

Address:

Signed by Brendon Mark Veale )  
 )  
as Trustee in the presence of: ) \_\_\_\_\_

Witness signature:

Witness name:

Occupation:

Address: